

his or her place of employment. If the petitioner is asking for protection on behalf of a minor child, then a specific area would be the child's school.

While the same statutory wording is not included in KRS 403.747(2)(a) when requiring a petitioner to explain the reasons why, and the benefits of, including specific areas from which the respondent be excluded, KRS 403.747(4) provides guidance as to what needs to be articulated by the petitioner when making the request. This statute states that a court shall not order a respondent to be excluded from a specific area if the petitioner does not present "... a specific, demonstrable danger to the petitioner [or other permissible party] protected in the order." The petitioner would need to inform the court in his or her petition if the respondent had been in the specific area in the past, making threats, or had often showed up at a specific area and followed the petitioner. For a minor child, an example of "specific, demonstrable danger" might be that in the past the respondent had taken the child from a specific area without permission.

The condition restraining the respondent from being at certain specific areas can be made permanent in a domestic violence order. However, at the domestic violence hearing, KRS 403.747(2)(b) provides the respondent an opportunity for response to the request for specific areas of exclusion. The response must include the reasons why the exclusion is not necessary or the benefits of denying such a request by the petitioner. If, for any reason, the respondent or counsel for the respondent does not attend the hearing, the respondent is deemed to have waived any objection to the requested exclusions.

### CRIMINAL HISTORY CONSIDERATION

A third positive facet of Amanda's Law is the provision permitting the courts to consider criminal histories and the issuance of any prior EPOs or DVOs. KRS 403.741 outlines when and how this can be done. Prior to a hearing held to determine if a DVO will be issued, the petitioner or the respondent can request the court to obtain a Kentucky criminal history check on the respondent from either the Kentucky State Police or the Administrative Office of the Courts. Either party

may also request the court obtain any and all history on any prior Kentucky EPOs or DVOs issued against the respondent. The court may, on its own motion, request these same documents.

Once these documents have been requested and received, the court is required to review all information when making a determination as to whether domestic violence has occurred in the past and is likely to occur in the future, therefore requiring the issuance of a DVO against the respondent. There are several factors the court will consider in reviewing the requested documents. In the criminal history, the court must pay special attention to "... respondent's record of past violence, threats of violence and danger to others". KRS 403.741(2)(a). In the EPO and DVO history, the court will look at the basis for previously issued EPOs or DVOs, as well as the respondent's compliance or non-compliance to said protective orders.

This part of Amanda's Law is an extremely strong part of the legislation. The ability to obtain the respondent's records prior to the domestic violence hearing allows the court to have valuable information, from a non-biased third party, that permits the court to see the entire picture of the relationship between the couple and the risks presented by such a relationship. That, in turn, helps the court to make the best decision possible.

### EPO EXTENSION WITHOUT APPEARANCE

KRS 403.740(4) provides the next positive change of the new legislation. Previously, EPOs issued by the court were good for up to 14 days. A hearing date was set upon the issuance of the EPO and service

had to be obtained on the respondent prior to the hearing date. If service was NOT obtained, then the petitioner had to appear in court to request that the EPO be contained another 14 days and continue to attempt to obtain service upon the respondent. This pattern could be repeated indefinitely if and until service was made.

The legislature added language to KRS 403.740(4) permitting the courts to automatically reschedule a domestic violence hearing in the event service is not obtained 72 hours prior to the set hearing date. The court will issue a new summons and hearing date order that will then be attached to the original petition for emergency protective order and given to the sheriff for service. This change helps the petitioner in that he or she does not have to appear in court every two weeks to ask for the EPO to be continued. This procedure can continue for up to six months, without the petitioner's appearance in court.

The change also provides that if service has not been obtained during the six month period, immediately prior to the expiration of the six months, the petitioner can complete a new petition for emergency protection order, based on the same set of facts, and get a new EPO without having to suffer another instance of domestic violence at the hands of his or her abuser. The petitioner can then repeat each six month process for up to two years.

Amanda's Law is not perfect. There are changes that could be made to make it more effective. However, the positive aspects of this piece of legislation do provide additional protections to the victims of domestic violence and have actually been put into practice by the courts. The work must continue, but Amanda's Law has provided a stronger foundation upon which to build. 🍷

